

Application of Propositions 13's Annual Inflation Adjustment to Properties Reconstructed Following a Disaster

Submitted by:

**Donald E. Williamson, Assessor
County of San Bernardino**

My interpretation of Proposition 13 is that for properties where due to a fire or other disaster all improvements were removed, the base year values of those properties, or at least the portion of the base year value attributable to improvements, should not be subject to the full 2 percent annual inflationary factor usually applied to base year values under Prop. 13. Only the percent value of property remaining should be subject to the inflationary factor.

This interpretation is based on California Constitution, Article XIII A, Section 2(b). That section states that the full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any year or reduction as shown in the consumer price index, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value. It is this language that forms the basis of my theory that a property's base year inflationary factor should be modified if improvements on the property are destroyed.

This theory is supported by a number of statutes. Revenue and Taxation Code section 75.10(b) provides that a new base year value is created when a structure is removed from a property. Removal of a structure from land constitutes "actual physical new construction" under the code section. The property is revalued at its full cash value on the date the new construction is completed. *In this case, "completion of the removal of the structure constitutes new construction and gets a new base year and a new base year value."* The inflationary factor is apportioned between the value of the land and the value of the structure on the land. *In this case, "the value of the structure is now zero, so the inflationary factor apportioned to the structure is zero."*

Revenue and Taxation Code section 170(g) states that the assessed value of property in its damaged condition is the taxable value of the property until it is restored or reconstructed. This section supports the theory that the inflationary factor of 2 percent is multiplied by the value of the property (which is zero when it is destroyed) during the period of time property improvements are damaged.

Revenue and Taxation Code section 51(b)(2) says that the base year value of real property does not include the portion of the previous base year value of the property that has been destroyed or removed. This section bases the base year value on the value of the property that remains after partial or total destruction of improvements. The annual inflation factor is applied to that. If there is zero structure value, the factor is applied against that.

In sum, the foregoing legal provisions support my theory that for properties where due to a fire or other disaster all improvements were removed, the base year values of those properties, or at least the portion of the base year value attributable to improvements, should not be subject to the full annual 2 percent inflationary factor usually applied to base year values under Prop. 13. The inflationary factor attributable to the structure is reduced in a proportionate amount based on the proportion of the structure that has been damaged.

R & T CODE SECTION 170

Roll value 1-1-2003 (Prop 13 value)	Date of fire 10-25-2003	Roll value 1-1-2004 (1.01867 factor)	Roll value 1-1-2005 (1.02 factor)	Roll value 1-1-2006 (1.02 est factor)	Roll value 1-1-2007 (1.02 est factor)
Land: 50,000	50,000 *	50,934	51,953	52,992	54,052
Imps: 150,000	0 (100% destroyed) **	0	0	0	153,000 (1)
Total: 200,000	50,000	50,934	51,953	52,992	207,052
			No start on rebuild	No start on rebuild	Rebuilt equivalent

(1) Imps rebuilt to substantial equivalent; restored value of $150,000 \times 1.02$ per Section 70(c) = 153,000

Example assumes no land damage and structure/home completely destroyed

* If land sustained damage multiply land roll value times percent of damage to land

**If structure/home were 50% destroyed, first multiply percent of damage times structure roll value and then apply the 2% factor

Note: All roll values including zero value the CPI factor was multiplied for each year as required by Prop 13

On every succeeding lien date, all three sections 75.10, 170, and section 51 (prop 8), should be looked at and enroll the lesser of the 3 values per Assessor responsibility to enroll "the lesser of" Prop 13 value indexed for inflation (75.10), Section 170, or Section 51. (Prop 8 value; current market value) which ever is the least.

R & T CODE SECTION 75.10

Roll value 1-1-2003 (Prop 13 value) ***	Date of fire 10-25-2003	Roll value 1-1-2004 (1.01867 factor)	Roll value 1-1-2005 (1.02 factor)	Roll value 1-1-2006, (1.02 est factor)	Roll value 1-1-2007 (1.02 est factor)
Land: 50,000	50,000 *	50,934	51,953	52,992	54,052
Imps: 150,000	0 (100% destroyed) **	0	0	0	153,000 (1)
Total: 200,000	50,000	50,934	51,953	52,992	207,052
			No start on rebuild	No start on rebuild	Rebuilt equivalent

* No damage reduction to land under 75.10

** Removal of structure is considered new construction, receives a new base year, receives a new base year value of "zero value" since structure has been removed

*** Under 75.10 adjustment to structure value made to the Prop 13 value and indexed for inflation for each year

(1) Imps rebuilt to substantial equivalent; restored value of 150,000 x 1.02 per Section 75(c) = 153,000

SECTION 170(g) FIRE EXAMPLE WITH IMPROVEMENTS PARTIALLY DESTROYED & SUBSEQUENTLY REBUILT

Roll value 1-1-2003 (Prop 13 value)	Date of fire 10-25-2003	Roll value 1-1-2004 (1.01867 factor)	Roll value 1-1-2005 (1.02 factor)	Roll value 1-1-2006 (1.02 est factor)	Roll value 1-1-2007 (1.02 est factor)
Land: 50,000	50,000	50,934	51,953	52,992	54,052
Imps: 150,000	75,000 (50% destroyed) 125,000	76,400 (1) 127,334	77,928 129,881	79,487 132,479	157,577 (2) 211,629
Total: 200,000			No start on rebuild	No start on rebuild	Rebuilt equivalent

Example of fire damaged property where the land suffered no damage but the improvements were 50% destroyed. The improvements were rebuilt to their substantial equivalent 4 years past the damage event date.

(1) Factored by CPI per R&T Section 170 (g), "the assessed value of the property in its damaged condition, as determined pursuant to subdivision (b) compounded annually by the inflation factor specified in subdivision (a) of Section 51, shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value."

(2) Improvement value restoration calculation: Prior roll value (1-1-2006) of $79,487 \times 1.02 = 81,077$
 Imp value removed as of date of fire $(150,000 - 75,000) = 75,000 \times 1.02 (2007 CPI) = + 76,500$ (no CPI applied for 04,05,06)
 Total imp value for 1-1-2007 **157,577**

Summation: Pursuant to LTA 81/123 in the example on page 2 the CPI/inflationary factor is applied to the structure value and then multiplied by the Percent Gred, yielding the valuation to the portion of the structure that actually exists, and taking away both the non-existent structure value and, the portion of the CPI/inflation attributable to the destroyed portion of the structure. This demonstrates and supports Assessor Williamson's interpretation.

R & T CODE SECTION 51**"Adjustments To Base Year Values."**

- (a) For purposes of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for each lien date after the lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall, except as otherwise provided in subdivision (b) or (c), be the lesser of:
- (1) Its base year value, compounded annually since the base year by an inflation factor, which shall be determined as follows:

- (2) Its full cash value, as defined in Section 110 as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value.
- (b) If the real property was damaged or destroyed by disaster, misfortune, or calamity and the board of supervisors of the county in which the real property is located has not adopted an ordinance pursuant to Section 170, or any portion of the real property has been removed by voluntary action by the taxpayer, the taxable value of the property shall be the sum of the following:
- (1) The lesser of its base year value of land determined under paragraph (1) of subdivision (a) or full cash value of land determined under paragraph (1) of subdivision (a) or full cash value of land determined pursuant to paragraph (2) of subdivision (a).
- (2) The lesser of its base year value of improvements determined pursuant to paragraph (1) of subdivision (a) or the full cash value of improvements determined pursuant to paragraph (2) of subdivision (a).

The State Constitution Article XIII A and Section 51 further support Assessor Williamson's position that a Prop 8/current market which should be considered for all properties including fire damaged properties and that current market has no inflation. The Revenue and Taxation and State Constitution require that the CPI/inflation be applied each year and to enroll the lesser of the Prop 13 indexed value or current market which is less: this requirement when the OR is applied that no 2% CPI/inflation is warranted as current market value has no inflation. Only the Prop 13 value has the 2% and the requirement is to do either one or the other NOT both.

SUMMATION (this further supports Assessor Williamson's interpretations)

In applying this subdivision, the base year value of the subject real property does not include that portion of the previous base year value of that property that was attributable to any portion of the property that has been destroyed or removed. The sum determined under this subdivision shall then become the base year value of the real property until that property is restored, repaired, or reconstructed or other provisions of law require establishment of a new base year value.

- (c) If the real property was damaged or destroyed by disaster, misfortune or calamity and the board of supervisors in the county in which the real property is located has adopted an ordinance pursuant to Section 170, the taxable value of the real property shall be its assessed value as computed pursuant to Section 170.

R&T CODE SECTION 71: NEW BASE YEAR VALUE. The assessor shall determine the new base year value for the portion of any taxable real property which has been newly constructed. The base year value of the remainder of the property assessed, which did not undergo new construction, shall not be changed.

R&T CODE SECTION 110.1 (f) For each lien date after the lien date in which the full cash value is determined pursuant to this section, the full cash value or real property, including possessory interest in real property, shall be adjusted by an inflation factor, which shall be determined as provided in subdivision (a) of Section 51.

R&T CODE SECTION 70 (e) Notwithstanding the provisions of subdivisions (a) and (b), where real property has been damaged or destroyed by misfortune or calamity, "newly constructed" and "new construction" does not mean any timely reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction.

SUMMATION

In Section 71 the physical removal of the structure by fire (LTA 81/123 includes structures destroyed by fire) removal of the structure by fire is considered "New Construction" and receives a "New Base Year" and a "New Base Year Value".

Similar restoration of said structure is NOT considered new construction under Section 70 (c) and retains its base year value prior to the damage/destruction plus the portion of CPI inflation that was attributable to the improvements that were in existence each year. See example labeled 170 (g).